

Original Filed 12/19/06

NOT FOR CITATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

MARY HELEN WOODSON,

Plaintiff,

V.

INTERNATIONAL BUSINESS MACHINES, INC.

Defendant.

Case Number C 05-3387 JF

ORDER¹ DENYING MOTION TO
DISMISS WITHOUT PREJUDICE
AND GRANTING MOTION FOR
MORE DEFINITE STATEMENT

[re: docket no. 49]

Defendant International Business Machines, Inc. (“IBM” or “the company”) moves to dismiss the first amended complaint after consolidation (“FAC-AC”²) of Plaintiff Mary Helen Woodson for failure to state a claim upon which relief may be granted, pursuant to Federal Rule of Civil Procedure 12(b)(6). Alternatively, IBM moves for a more definite statement pursuant to Federal Rule of Civil Procedure 12(e). For the reasons discussed below, the Court will deny the

¹ This disposition is not designated for publication and may not be cited.

² The document filed by Plaintiff is entitled “First Amended Complaint.” As IBM notes, the consolidation of the two actions renders calling this complaint the “First Amended Complaint” confusing. Accordingly, the Court will refer to this complaint as the “First Amended Complaint After Consolidation” or “FAC-AC.”

1 motion to dismiss without prejudice and grant the motion for a more definite statement.

2 **I. BACKGROUND**

3 **1. Procedural Background**

4 Two actions have been consolidated in this case. The Court will discuss each in turn, and
5 then will discuss the consolidated action.

6 a. Action One, Case Number C 05-3387 JF

7 Action One is based on allegations that IBM improperly terminated Plaintiff from her
8 position on or about June 24, 2002, forcing her to find another position in the company. Plaintiff
9 filed a complaint in this action in the Santa Clara Superior Court on May 10, 2005, and filed a
10 first amended complaint (“FAC”) on July 8, 2005. The FAC asserted claims for (1) age
11 discrimination, (2) disability discrimination, (3) religious discrimination, and (4) breach of the
12 covenant of good faith and fair dealing. On the basis of diversity jurisdiction, IBM removed the
13 action to this Court on August 19, 2005. This action was numbered C 05-03387 JF (PVT).

14 On November 8, 2005, this Court granted IBM’s motion to dismiss for failure to state a
15 claim upon which relief may be granted. Plaintiff’s claim for religious discrimination was
16 dismissed without leave to amend because Plaintiff conceded that this claim was time-barred.
17 Plaintiff’s claims for age and disability discrimination were dismissed with leave to amend
18 because Plaintiff did not allege any facts demonstrating how her transfer to a new position
19 resulted in a substantial adverse change in the terms and conditions of her employment.
20 Plaintiff’s claim for breach of contract was dismissed with leave to amend because Plaintiff did
21 not allege how her transfer within the company breached any of the terms of employment recited
22 in the FAC. Plaintiff’s claim for breach of implied covenant, which asserted that IBM’s breach
23 of contract was in bad faith, was dismissed because Plaintiff failed to allege adequately a breach
24 of contract.

25 On December 5, 2005, Plaintiff filed a second amended complaint (“SAC”). The SAC
26 asserted the following claims: (1) age discrimination in violation of California’s Fair
27 Employment and Housing Act (“FEHA”), Cal. Gov’t Code § 12940 *et seq.*; (2) disability

1 discrimination in violation of FEHA; (3) breach of employment contract; and (4) breach of the
 2 implied covenant of good faith and fair dealing. On December 22, 2005, IBM moved to dismiss
 3 the SAC for failure to state a claim upon which relief may be granted, pursuant to Federal Rule
 4 of Civil Procedure 12(b)(6). Plaintiff opposed the motion, and the Court heard oral argument on
 5 April 28, 2006. On May 2, 2006, the Court denied IBM's motion to dismiss and ordered it to
 6 answer the complaint within twenty days. IBM answered the SAC on May 22, 2006.

7 b. Action Two, Case Number C 05-3939 JF

8 Action Two involves allegations that IBM terminated Plaintiff's employment unlawfully
 9 in October 2003. On or about October 10, 2003, and again on or about September 28, 2004,
 10 Plaintiff filed an employment discrimination complaint with the California Department of Fair
 11 Employment and Housing ("DFEH"). In a right-to-sue letter dated September 28, 2004, the
 12 DFEH informed Plaintiff that she had the right to bring a civil action under California's Fair
 13 Employment and Housing Act ("FEHA") within one year. On September 28, 2005, exactly one
 14 year later, Plaintiff filed case number C 05-3939 JF, naming IBM as a defendant. The complaint
 15 asserted claims for (1) disability discrimination, (2) breach of employment contract, and (3)
 16 breach of the covenant of good faith and fair dealing. Plaintiff did not serve the complaint until
 17 April 26, 2006, 211 days after filing.

18 On May 16, 2006, IBM moved to dismiss the complaint in Action Two for untimely
 19 service or, alternatively, for a more definite statement of Plaintiff's first two claims for relief.
 20 Plaintiff opposed the motion, and the Court heard oral argument on July 21, 2004. On July 25,
 21 2006, the Court denied IBM's motion to dismiss and granted the motion for a more definite
 22 statement ("July 25th Order"). The Court directed Plaintiff to clarify her statement of
 23 jurisdiction, her first claim for disability discrimination, and her second claim for breach of
 24 contract. The Court also consolidated the two actions under the case number assigned to Action
 25 One, C 05-3387 JF. The Court directed Plaintiff to file any amended complaint before August
 26 25, 2006.

27 c. The Consolidated Action, C 05-3387 JF

1 On September 22, 2006, Plaintiff filed an administrative motion for extension of time to
 2 file an amended complaint, attaching her proposed amended complaint. On October 2, 2006, the
 3 Court granted this motion and accepted the proposed amended complaint. This complaint, the
 4 FAC-AC, pertains to the termination of Plaintiff's employment in October 2003 and is the
 5 subject of the present motion. It asserts three claims for relief: (1) disability discrimination; (2)
 6 breach of employment contract; (3) breach of the covenant of good faith and fair dealing.

7 The FAC-AC is an amended version of the Action Two complaint, rather than a
 8 complaint that consolidates the claims of both actions. This leaves two operative complaints in
 9 the consolidated action: (1) the SAC, filed on December 5, 2005, that pertains to the termination
 10 of Plaintiff's position in June 2002; and (2) the FAC-AC, filed on September 22, 2006, that
 11 pertains to the termination of Plaintiff's employment in October 2003.

12 On October 19, 2006, IBM moved to dismiss the FAC-AC for failure to state a claim
 13 upon which relief may be granted ("motion"), pursuant to Federal Rule of Civil Procedure
 14 12(b)(6), or, alternatively, for a more definite statement. Plaintiff opposes the motion. The
 15 Court heard oral argument on December 15, 2006.

16 **2. Factual Allegations in the FAC-AC**

17 Plaintiff alleges the following facts in the FAC-AC:³ "The alleged discrimination and
 18 unlawful acts occurred on or about October 8, 2002, through March 15, 2004." FAC-AC ¶ 12.
 19 Plaintiff had disabilities during this time in the form of physical and mental conditions including
 20 clinical depression, migraines, and muscoskeletal problems that substantially limited major life
 21 activities. *Id.* ¶ 13. Plaintiff was able and willing to perform to perform the functions of her job
 22 at all times during the period of alleged discrimination. *Id.* ¶ 14. Plaintiff had received positive
 23 performance reviews throughout her time working at IBM. *Id.* ¶ 15.

24 On or about July 1, 2002, Plaintiff was transferred into Department L55. *Id.* This
 25 transfer was effectively a demotion. *Id.* ¶ 16. Between approximately October 2002 and

27 ³ The Court expresses no opinion regarding the truth of the facts asserted by Plaintiff and
 28 detailed in this section.

1 December 2002, IBM authorized shortened and flexible work hours for Plaintiff within strict
 2 time limits. *Id.* ¶ 18. IBM informed Plaintiff that an independent medical examination would be
 3 arranged if she did not become able to work without limitation by late November 2002, but this
 4 examination did not occur. *Id.* ¶ 19. After December 4, 2002, IBM refused to provide any
 5 accommodation to allow Plaintiff to perform the essential functions of her job. *Id.* ¶ 20. IBM
 6 suggested that Plaintiff's back problems were psychological in nature but offered no reason for
 7 this opinion. *Id.* IBM refused to determine an effective accommodation for Plaintiff's
 8 disabilities and asserted that the Americans With Disabilities Act ("ADA") did not apply to her.
 9 *Id.*

10 After December 4, 2002, IBM required Plaintiff to work under conditions that aggravated
 11 her health problems. *Id.* ¶ 22. IBM characterized health-related absences as unexcused absences
 12 and thus deprived Plaintiff of medical and disability benefits. *Id.* IBM repeatedly ignored or
 13 refused Plaintiff's continued requests for accommodation, *id.* ¶ 23, and did not show that such
 14 accommodation would impose undue hardship on IBM. *Id.* ¶ 24. On January 20, 2003, Plaintiff
 15 received a lower evaluation than she had received at her former position. *Id.* ¶ 25. IBM told her
 16 that it was because of a learning curve and denied her appeal, noting that she had not failed to
 17 meet any requirements. *Id.* ¶¶ 25-26.

18 After the evaluation, IBM's attitude and conduct toward Plaintiff indicated that it
 19 intended to drive her from her job. *Id.* ¶ 27. Plaintiff's manager told her that she had to arrive at
 20 work at 8.30 a.m. each morning and checked that she did so, even though other employees did
 21 not have to arrive at this time. *Id.* ¶¶ 28, 31. Plaintiff's manager began to challenge her technical
 22 decisions. *Id.* ¶ 32. Ensuing criticisms of her performance were part of efforts to suggest that
 23 she had performance problems. *Id.* IBM treated Plaintiff differently from her co-workers in
 24 multiple ways in an effort to make her quit. *Id.* ¶¶ 33-36. When these attempts to make her quit
 25 did not work, IBM escalated its efforts and repeatedly told her that new requirements were
 26 conditions of her employment. *Id.* ¶¶ 36-38, 40. Plaintiff attempted to discover the extent of her
 27 conditions of employment, but was only directed to the IBM's website for Business Conduct
 28

1 Guidelines. *Id.* ¶ 41.

2 On or about September 15, 2003, IBM presented Plaintiff with a document stating that
 3 she had requested leave under the Family and Medical Leave Act, when in fact she had not. *Id.* ¶
 4 42. IBM told her to request leave by September 30, 2003, and to submit the required supporting
 5 medical documentation. *Id.* Plaintiff never expressed a desire to go on leave. *Id.* ¶ 44. When
 6 Plaintiff did not apply for unpaid FMLA leave, IBM terminated her employment on October 3,
 7 2003. *Id.* ¶ 53.

8 Plaintiff appealed her termination, but IBM refused to reinstate her. *Id.* ¶ 54. Plaintiff
 9 filed charges with the California Department of Fair Employment and Housing (“FEH”) on or
 10 about October 10, 2003, and September 28, 2004. *Id.* ¶ 55. Complaints were cross filed with the
 11 Equal Employment Opportunity Commission. *Id.* IBM made repeated false statements during
 12 the course of the investigation and presented no evidence of any performance problems. *Id.* ¶¶
 13 56-58. The FEH issued a Notice-of-Right-to-Sue Letter in the final quarter of 2004. *Id.* ¶ 60.⁴

14 II. LEGAL STANDARD

15 1. Motion to Dismiss

16 “A court may dismiss a complaint only if it is clear that no relief could be granted under
 17 any set of facts that could be proved consistent with the allegations.” *Hishon v. King &*
 18 *Spaulding*, 467 U.S. 69, 73 (1984). For purposes of a motion to dismiss, the plaintiff’s
 19 allegations are taken as true, and the Court must construe the complaint in the light most
 20 favorable to the plaintiff. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). The pleading of a
 21 *pro se* litigant is held to a less stringent standard than a pleading drafted by an attorney, and is to
 22 be afforded the benefit of any doubt. *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Karim-Panahi*
 23 *v. Los Angeles Police Department*, 839 F.2d 621, 623 (9th Cir. 1988). Further, a *pro se* litigant
 24 must be given leave to amend unless it is absolutely clear that the deficiencies of the complaint
 25 could not be cured by amendment. *Lucas v. Department of Corrections*, 66 F.3d 245, 248 (9th

26
 27 ⁴ Plaintiff writes: “The Department of Fair Employment and Housing issued a Notice-of-
 28 Right-To-Sue letter, which was received by Plaintiff on or about November 1, 2004, and
 September 28, 2004.”

1 Cir. 1995).

2 **Motion for More Definite Statement**

3 Federal Rule of Civil Procedure 12(e) states that:

4 If a pleading to which a responsive pleading is permitted is so vague or
 5 ambiguous that a party cannot reasonably be required to frame a responsive
 6 pleading, the party may move for a more definite statement before interposing a
 7 responsive pleading. The motion shall point out the defects complained of and the
 8 details desired. If the motion is granted and the order of the court is not obeyed
 9 within 10 days after notice of the order or within such other time as the court may
 10 fix, the court may strike the pleading to which the motion was directed or make
 11 such order as it deems just.

12 Fed. R. Civ. P. 12(e)

13 A Rule 12(e) motion will not be granted unless the complaint is so indefinite that the
 14 defendant cannot ascertain the nature of the claim being asserted. *Famolare, Inc. v. Edison Bros.*
 15 *Stores, Inc.*, 525 F. Supp. 940, 949 (D.C.Cal. 1981). A Rule 12(e) motion attacks the
 16 unintelligibility of a pleading, and not merely lack of detail. *Bureerong v. Uvawas*, 922 F. Supp.
 17 1450, 1461 (citation omitted). A pleading that satisfies the notice pleading standards of Rule 8 is
 18 sufficient to withstand a Rule 12(e) motion for a more definite statement. *Famolare* at 949
 19 (denying motion because statement of exact dates of alleged misconduct was not required by
 20 Rule 8(e)); *see also Boxall v. Sequoia Union High School Dist.*, 464 F. Supp. 1104 at 1114
 21 (“While defendant may not have been able to ascertain all the details of Plaintiff’s case from the
 22 complaint, that is not the function of pleadings in the federal courts.”).

23 **III. DISCUSSION**

24 **1. Motion to Dismiss**

25 IBM moves to dismiss the FAC-AC on the grounds that it does not articulate the statutory
 26 basis of the disability discrimination claim, that it does not include a clear jurisdictional
 27 statement, and that the disability claim fails as a matter of law.

28 The Court concludes that once again it must order Plaintiff to provide a more definite
 29 statement. Until it has a better understanding of the legal basis of Plaintiff’s claims, it would be
 30 premature to decide whether Plaintiff may bring a claim for an act of discrimination that
 31 continues beyond the termination of Plaintiff’s employment. Accordingly, the Court will deny
 32

1 the motion to dismiss without prejudice to its renewal if Plaintiff provides a more definite
 2 statement pursuant to the discussion in the following section.

3 **2. Motion for a More Definite Statement**

4 a. Statement of Statutory Basis

5 In the July 25th Order, the Court noted that “[t]he complaint does not identify any
 6 specific provisions of the ADA or Title VII that allegedly have been violated by Defendant.”
 7 July 25th Order 7. IBM argues that Plaintiff has failed to comply with the July 25th Order
 8 because she does not specify in the FAC-AC the statutory section that she relies upon to support
 9 her disability-discrimination claim. Motion 4.

10 To be sure, the FAC-AC now cites at least seven statutory schemes. However, Plaintiff
 11 fails to identify which of her factual allegations apply to which “specific provisions of the ADA
 12 or Title VII that allegedly have been violated by Defendant.” July 25th Order 7. It may be true,
 13 as Plaintiff alleges, that “[a]ll [the cited] statutes have to do with forbidding unlawful
 14 discrimination, providing for family and medical leave, and providing penalties for violations,”
 15 Opposition 6, but such a broad allegation does not satisfy the requirements of Federal Rule of
 16 Civil Procedure 8. That rule requires that any complaint contain “a short and plain statement of
 17 the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(b)(2). Complaints that
 18 fail to make such a statement give inadequate notice to defendants of the alleged violations.
 19 Simply identifying a broad range of statutes applicable to the relevant subject matter is not an
 20 adequate substitute for informing a defendant of the rights it has allegedly violated.⁵

21 b. Statement of Jurisdiction

22 The Court observed in the July 25th Order that Plaintiff included multiple asserted bases
 23 of jurisdiction, including diversity jurisdiction and jurisdiction under 42 U.S.C. § 2000e-5. July
 24

25 ⁵ The FAC-AC does include a large amount of detail. The problem is that Plaintiff does
 26 not “connect the dots” between the statutory provisions she lists and the specific facts that she
 27 believes show a violation of these provisions. The Court cannot act as counsel to Plaintiff, or tell
 28 her what legal claims she may have against IBM. Instead, Plaintiff must tell the Court and IBM
 which laws IBM violated by acting in the way she details. As discussed above, Plaintiff must do
 so with adequate specificity to allow IBM to respond to the allegations.

1 25th Order 5. The Court found the statement of jurisdiction deficient because the latter asserted
 2 basis of jurisdiction did not correspond to a matching claim under the ADA. The Court directed
 3 Plaintiff to remedy this deficiency.

4 The FAC-AC includes a more extensive statement of jurisdiction than the earlier
 5 complaint. First, Plaintiff asserts jurisdiction on the basis of diversity of citizenship pursuant to
 6 28 U.S.C. § 1332. FAC-AC ¶ 1. Plaintiff continues:

7 Additionally, this court has jurisdiction over this action pursuant to 29 U.S.C. §
 8 2601 *et seq.*, 42 U.S.C. § 2000e-5, per 42 U.S.C. §12117 *et seq.* because of
 9 Plaintiff's allegations of employment discrimination based on disability, which
 10 authorizes plaintiffs under 42 U.S.C. § 12117 to seek damages as under 42 U.S.C.
 11 § 2000e, *et seq.*; and pursuant to 2 U.S.C. § 1311 *et seq.*, which extends the rights
 12 and protections available under the Civil Rights Act of 1964, the Age
 13 Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, and
 14 Title I of the Americans with Disabilities Act of 1990, the Family and Medical
 15 Leave Act of 1993, and other Acts, as well as prohibiting acts of intimidation or
 16 reprisal.

17 *Id.* This amended statement of jurisdiction is more extensive than the one the Court found
 18 deficient in the July 25th Order. However, the inadequacy of Plaintiff's statement of the
 19 statutory basis for the disability claim makes it impossible to discern what legal claims Plaintiff
 20 has under federal law and, therefore, what bases of jurisdiction she may assert. It appears that the
 21 Court has diversity jurisdiction over the matter,⁶ but it cannot discern if other bases for
 22 jurisdiction exist. Providing a clear statement of the statutory sections allegedly violated by IBM
 23 will allow Plaintiff to provide a clear statement of jurisdiction. The FAC-AC does not provide
 24 such detail.

25 IV. ORDER

26 Good cause therefor appearing, IT IS HEREBY ORDERED that the motion to dismiss is
 27 DENIED WITHOUT PREJUDICE and the motion for a more definite statement is GRANTED.

28 ⁶ The existence of diversity jurisdiction is not before the Court and has not been
 29 challenged by IBM. The Court perceives no reason for concluding that it does not exist.

1 Plaintiff shall file any amended complaint within thirty (30) days of the issuance of this order.⁷
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4 DATED: December 19, 2006

5 
6 JEREMY FOGEL
7 United States District Judge

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26 ⁷ This deadline would be subject to a modification granted after a request to postpone
27 previously scheduled deadlines. Plaintiff requested additional time to proceed on this case as a
28 result of her continuing health problems. The Court told her to file any such request in writing
with relevant supporting evidence from her doctor. The Court does not express any opinion
regarding the likelihood of success of such a request.

1 This Order was served on the following persons:

2 Patrick C. Doolittle patrickdoolittle@quinnmanuel.com

3 Scott G. Lawson scottlawson@quinnmanuel.com,
robertchang@quinnmanuel.com

4 Notice will be delivered by other means to:

5 Mary Helen Woodson
6 475 Milan Drive, #102
7 San Jose, CA 95134

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